



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0148; FRL-9977-00-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to the Permitting Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on October 4, 2017, related to South Dakota's Air Pollution Control Program. The October 4, 2017 submittal updates certain dates of incorporation by reference and reorganizes and revises certain rules. In this rulemaking, we are proposing action on all portions of the October 4, 2017 submittal, except for those portions of the submittal which do not belong in the SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by EPA-R08-OAR-2018-0148 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

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SUPPLEMENTARY INFORMATION:

I. The EPA’s Evaluation of South Dakota’s Submission - Air Pollution Control Program Chapter 74:36

October 4, 2017 Submittal

A. Chapter 74:36:01 – Definitions

Chapter 74:36:01 defines the terms used throughout Article 74:36 – Air Pollution Control Program. There are six definitions in Chapter 74:36:01 that reference federal regulations. The sections in Chapter 74:36:01 that are being updated to the version of the federal reference specified in the Code of Federal Regulations (CFR) as of July 1, 2016, involve the following: 74:36:01:01(8); 74:36:01:01(29); 74:36:01:01(67); 74:36:01:05(1); and 74:36:01:20(5), (7) and (8).

B. Chapter 74:36:02 – Ambient Air Quality

Chapter 74:36:02 established air quality goals and ambient air quality standards for South Dakota. The sections in Chapter 74:36:02 that are being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involve the following: 74:36:02:02; 74:36:02:03; 74:36:02:04; and 74:36:02:05.

C. Chapter 74:36:03 – Air Quality Episodes

Chapter 74:36:03 identifies the contingency plan the South Dakota Department of Environment and Natural Resources (DENR) will follow during an air pollution emergency episode. The sections in Chapter 74:36:03 that are being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involve the following: 74:36:03:01 and 74:36:03:02.

D. Chapter 74:36:04 – Operating Sources for Minor Sources

Chapter 74:36:04 is South Dakota's minor source air quality operating permit program. South Dakota is proposing to remove the first two sentences in 74:36:04:04 (Standard of issuance of a minor source operating permit). The removed language refers to air pollution dispersion modeling and other dispersion techniques.

South Dakota's minor source air quality program initially was both a construction and operating permit program. South Dakota separated the construction portion from the minor source air quality operating permit program in calendar year 2010 by developing an independent construction permit program as outlined in Chapter 74:36:20 (Construction Permits for New Sources or Modifications). On June 27, 2014, the EPA took final action to approve Chapter 74:36:20 (79 FR 36419). The construction permit program in Chapter 74:36:20 identifies the

requirements for air pollution dispersion modeling. Therefore, this language is no longer needed in South Dakota's minor air quality operating permit program 74:36:04:04.

E. Chapter 74:36:05 – Operating Sources for Part 70 Sources

We are not taking action on revisions to this chapter as South Dakota's Title V operating permit programs is not part of the SIP.

F. Chapter 74:36:06 – Regulated Air Pollutant Emissions

Chapter 74:36:06 identifies South Dakota's regulated air pollutants which are established to ensure South Dakota's air quality is in compliance with the federal national ambient air quality standards (NAAQS). Section 74:36:06:07 (Open burning practices prohibited) references 74:10:05:11.04, which was repealed on January 12, 2012. This section was replaced with 74:12:04:11. Changes are proposed to correct the reference to this section.

G. Chapter 74:36:07 – New Source Performance Standards

We are not taking action on revisions to this chapter. New Source Performance Standards (NSPS) are not part of the SIP.

H. Chapter 74:36:08 – National Emission Standards for Hazardous Air Pollutants

We are not taking action on revisions to this chapter. National Emission Standards for Hazardous Air Pollutants (NESHAPs) are not part of the SIP.

I. Chapter 74:36:09 – Prevention of Significant Deterioration (PSD)

Chapter 74:36:09 is South Dakota's PSD preconstruction program for major sources located in areas of the state that attain the federal NAAQS. The sections in Chapter 74:36:09 that are being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involve the following: 74:36:09:02 and 74:36:09:03.

In addition, on November 7, 2016, the EPA published a final rulemaking action titled “Rescission of Preconstruction Permits Issued under the Clean Air Act.” (81 FR 78043, see docket) This rulemaking revised 40 CFR 52.21(w). The corresponding changes to 40 CFR 52.21(w) are outlined at 81 FR 78043. South Dakota has revised 74:36:09:02(6) to incorporate by reference the November 7, 2016 changes to 40 CFR 52.21(w).

Specifically, 81 FR 78043 revised 40 CFR 52.21(w)(2) to remove the July 30, 1987, date restriction; revised 40 CFR 52.21(w)(3) to change the word “shall” to “may” and revised 40 CFR 52.21(w)(1) to appropriately cross reference paragraph (r) and not paragraph (s) of the EPA’s PSD regulations.

J. Chapter 74:36:10 – New Source Review

Chapter 74:36:10 is South Dakota’s New Source Review (NSR) preconstruction permit program for major sources in areas of the state that are not attaining the NAAQS. All of South Dakota is in attainment with the federal standards; therefore, there are no facilities that require a preconstruction permit under this program.

The sections in Chapter 74:36:10 that are being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involve the following: 74:36:10:02; 74:36:10:03.01; 74:36:10:05; 74:36:10:07; and 74:36:10:08.

K. Chapter 74:36:11 – Performance Testing

Chapter 74:36:11 identifies the performance testing requirements used by permitted facilities to demonstrate compliance with permit limits. The section in Chapter 74:36:11 that is being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involves 74:36:11:01.

L. Chapter 74:36:12 – Control of Visible Emissions

Chapter 74:36:12 identifies visible emission limits for units that emit air pollution. The sections in Chapter 74:36:12 that are being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involve the following: 74:36:12:01 and 74:36:12:03.

M. Chapter 74:36:13 – Continuous Emission Monitoring Systems

We are not taking action on revisions to this chapter. Continuous Emission Monitoring Systems are part of South Dakota's Title V program and are not part of the SIP.

N. Chapter 74:36:16 – Acid Rain Program

We are not taking action on revisions to this chapter. The Acid Rain Program is not part of the SIP.

O. Chapter 74:36:18 – Regulations for State Facilities in the Rapid City Area

The section in Chapter 74:36:18 that is being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involves 74:36:18:10.

P. Chapter 74:36:20 – Construction Permits for New Sources or Modifications

Chapter 74:36:20 requires an air quality construction permit for new or modified sources that do not meet the requirements for obtaining a preconstruction permit in Chapters 74:36:09 and 74:36:10.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference specified in the CFR as of July 1, 2016. These proposed changes involve section 74:36:20:05 (Standard for Issuance of a Construction Permit).

South Dakota is proposing to revise section 74:36:20:05 to clarify that air dispersion modeling for new or modified minor sources is one of several information items that may be

required by the department for inclusion in a permit application. This proposed change to the SIP is a clarification and does not modify the standard for issuance of a construction permit's substantive requirements. The standard in Section 74:36:20:05 requires that "[a] construction permit for a new source or modification to an existing source may be issued only if it has been shown that the operation of the new source or modification to an existing source will not prevent or interfere with the attainment or maintenance of an applicable national ambient air quality standard." Statutory requirements under CAA section 110(l) provide that the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. South Dakota's rules provide for several methods and data (ambient monitoring data, emissions inventories, air dispersion modeling, or a combination of these data in a comprehensive analysis) to make the required determination as to whether a project would interfere with attainment or maintenance of the NAAQS. In addition to requirements in Section 74:36:20:05, Section 74:36:20:07 specifies the required contents of a complete application for a construction permit, and includes "[t]he results of any dispersion modeling required by the department" and "[a]ny other information requested by the department that is relevant to determining compliance with that act or the Clean Air Act." Therefore, the revisions to 74:36:20:05 will not interfere with any applicable requirement concerning attainment and reasonable further progress with the NAAQS.

Q. Chapter 74:36:21 – Regional Haze Program

Chapter 74:36:21 contains the requirements South Dakota agreed to as part of the South Dakota Regional Haze Program. The EPA approved sections 74:36:21 through 74:36:21:12 into South Dakota's SIP.

The sections in Chapter 74:36:21 that are being updated to the version of the federal reference specified in the CFR as of July 1, 2016, involve the following: 74:36:21:02(8); 74:36:21:04; 74:36:21:05; and 74:36:21:09.

South Dakota has also proposed changes to include that a construction permit for a new major source or modification to a major source will be issued only after the source has demonstrated that it will not contribute to adverse impact on visibility in any mandatory Class I federal area. Changes include guidance for performing air dispersion modeling if air dispersion modeling is required to demonstrate no adverse impact on visibility. These changes are located in section 74:36:21:04 (Visibility Impact Analysis).

II. What is the EPA Proposing to Approve?

A. What the EPA is Not Acting On

The EPA is not acting on revisions to 74:36:05 (Operating Permits for Part 70 Sources), 74:36:07 (New Source Performance Standards), 74:36:08 (National Emission Standards for Hazardous Air Pollutants), 74:36:13 (Continuous Emission Monitoring System) and 74:36:16 (Acid Rain), because these sections are not part of the SIP.

B. What the EPA is Acting On

The EPA is proposing to approve all revisions as submitted by the State of South Dakota on October 4, 2017, as described in section I. of this proposed rulemaking, with the exception of the revisions mentioned in section II. A. of this rulemaking.

The revisions are in compliance with federal requirements, including: 1) CAA section 110(a)(2)(c), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved; 2) The regulatory requirements under 40 CFR 51.160, including section 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and 3) the statutory requirements under CAA section 110(l), which provides that the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

III. Incorporation by Reference

In this action, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing the incorporation by reference of changes to the State of South Dakota's SIP regarding their Air Pollution Control Program in Chapter 74:36. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices,

provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 19, 2018

Douglas Benevento,
Regional Administrator,
Region 8.

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